



## STAFF REVIEW AND RECOMMENDATION

Variance Case #: V2013-30

Legistar #: 20130715

Board of Zoning Appeals Hearing: Monday, July 29, 2013 – 6:00 p.m.

Property Owner: MSB Cobb and DAB Associates  
Attn: Stuart Meddin  
1708 Peachtree Street, Suite 208  
Atlanta, GA 30309

Applicant: Marc Feinberg  
The Hertz Corporation  
1551 Cobb Parkway South  
Marietta, GA 30062-2456

Address: 1551 Cobb Parkway S.

Land Lot: 06570 District: 17 Parcels: 0020

Council Ward: 1 Existing Zoning: CRC (Community Retail Commercial)

### Special Exception / Special Use / Variance(s) Requested:

1. Variance to reduce required acreage for auto sales and additional businesses from 1.46 acres to 1.08 acres. [§708.16]

### Statement of Fact

As per section 720.03 of the Comprehensive Development Code of Marietta, the Board of Zoning Appeals may alter or modify the application of any such provision in the Development Code because of unnecessary hardship if doing so shall be in accordance with the general purpose and intent of these regulations, or amendments thereto, and only in the event the board determines that by such alteration or modification unnecessary hardship may be avoided and the public health, safety, morals and general welfare is properly secured and protected. In granting any variance the board of zoning appeals shall designate such conditions in connection therewith as will, in its opinion, secure substantially the objectives of these regulations and may designate conditions to be performed or met by the user or property owner, out of regard for the public health, safety, comfort, convenience, and general welfare of the community, including safeguards for, with respect to light, air, areas of occupancy, density of population and conformity to any master plan guiding the future development of the city. The development costs of the applicant as they pertain to the strict compliance with a regulation may not be the primary reason for granting a variance.

**Criteria:**

1. Exceptional or extraordinary circumstances or conditions *are/are not* applicable to the development of the site that do not apply generally to sites in the same zoning district.
2. Granting the application *is/is not* necessary for the preservation and enjoyment of a substantial property right of the applicant, and to prevent unreasonable property loss or unnecessary hardship.
3. Granting the application *will/will not* be detrimental or injurious to property or improvements in the vicinity of the development site, or to the public health, safety, or general welfare.

**PICTURES**



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**Recommended Action:**

Marc Feinberg, petitioner and applicant for the property owner, DAB Associates, is requesting a variance to conduct auto sales on property that currently rents vehicles. The property does not have sufficient acreage for both businesses, as the code requires a minimum of one (1) acre for auto sales and a minimum lot size of 20,000 sq. ft. for all other businesses. The subject property is a 1.08 acre parcel located at 1551 Cobb Parkway South, and is zoned CRC (Community Retail Commercial). The subject property is located on Cobb Parkway, just south of Franklin Road, and is surrounded by other businesses that are zoned CRC (Community Retail Commercial). To the north of the subject property is Pep Boys Automotive, and to the south is a vacant building; and both are zoned CRC (Community Retail Commercial). Across the street, to the west of the subject property is Dobbins Air Reserve Base, which is outside of the City limits.

The applicant is requesting a variance to allow Hertz Cars to conduct auto sales on the subject property, along with the car rental business that is currently being operated. According to City Code (§708.16), a property that operates auto sales is required to have a minimum of 1 acre, and any additional businesses - 1 or more - that operate on the same property is required to have an additional 20,000 square feet, for a total of 63,560 square feet, or 1.46 acres. The survey indicates that the subject property has 1.08 acres/47,208.5 square feet, which is insufficient to conduct both auto sales and auto rental businesses.

According to signs located on the property – as well as activity observed at the site – vehicles are currently being offered for sale on the subject property. Cars parked on the lot have stickers on the front windows that displayed “Pre-owned Certified”. However, the property does not have a business license to conduct automobile sales. An auto-dealership and auto rental business operated on the property – and had appropriate business licenses – from 1996 to 2005, when the auto-dealership business license became inactive in 2006. The auto rental business has an active license.

City Code does not allow the reestablishment of a nonconforming use after the dealership license has been expired for 6 months, so the property lost its “legal nonconforming use” status in 2006.

It should also be noted that to the rear of the subject property is a Penske Truck Rental business that is located at 1553 Cobb Parkway South (1.04 acres); and that property is also zoned CRC (Community Retail Commercial). Access to Penske Truck Rental is provided from Cobb Parkway through the Hertz property (1551 Cobb Parkway South), however, the survey that has been submitted does not identify an access easement to the property at 1553 Cobb Parkway South. Although the properties are owned by two different owners, there may be some opportunity for Hertz to obtain additional property in order to meet automobile sales regulations.

The subject property is very congested due to the number of cars stored on the site, and as a result, access and circulation around the site is difficult, which could be a safety hazard for emergency vehicles. With the current area of the parcel, the property can continue to be used for either for vehicle leasing or for vehicle sales, but not both according to the code.



Department of Development Services  
205 Lawrence Street  
Marietta, Georgia 30060  
Brian Binzer, Director

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As a result, **Staff recommends denial of this variance request.** However, should the variance be approved, a stipulation should be added to require the property owner to maintain clear 20 foot driveway aisles throughout the property.